IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15758 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAKSH FOODS PVT LTD - Petitioner(s)

Versus

GUJARAT ELECTRICITY BOARD & 1 - Respondent(s)

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Appearance :

MS SUDHA R GANGWAR for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MS LILU K BHAYA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/12/2005

ORAL JUDGMENT

1. Leave to substitute respondent No.1 - Gujarat Electricity Board as Madhya Gujarat Vij Company Ltd.

2. Ms.Lilu Bhaya, learned advocate appearing on behalf of the respondent No.1 – Madhya Gujarat Vij Company also.

3. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for appropriate, writ, order and/or directions directing the respondent No.1 to grant power connection to the petitioner forthwith.

4. It is the case on behalf of the petitioner that the petitioner has purchased

assets i.e. lands, building and machinery held by one M/s.Lavraj Food Pvt.Ltd., Rajula (hereinafter referred to as “the said Company” for convenience) in the year 1998 by way of sale from the auction arranged by Gujarat State Financial Corporation Limited (hereinafter referred to as “the GSFC” for convenience) to recover outstanding dues under the provisions of the State Financial Corporation Act, 1951 (hereinafter referred to as “the Act” for short) and after completion of all the formalities, the possession of the land, building and machinery etc of the said company was handed over to the petitioner Company by the GSFC on 27/4/1998. It is the case on behalf of the petitioner that thereafter the petitioner approached the respondent Board for electric connection on the said premises and paid all the necessary charges for new connection and thereafter the officers of the respondent Board visited the Unit and prepared estimate for reconnection charges and

the petitioner has duly made the payment of the said charges. However, subsequently, the petitioner is informed that as there is outstanding due and payable by the erstwhile owner i.e. M/s.Lavraj Food Pvt.Ltd. to the respondent Board, unless and until the said dues is not paid by the petitioner being subsequent purchaser, the electricity connection will not be given. Therefore, the petitioner has preferred the present petition with the aforesaid prayer.

5. Learned advocate appearign on behalf of the petitioner has heavily relied upon the judgement of the Hon'ble Supreme Court in the case of Isa Marbals Vs. Bihar Electricity Co. reported in 1995 (2) GLR 134 in support of her submission that unless there is statutory provision enabling the respondent Board to recover the outstanding dues of erstwhile owner from the subsequent purchaser, the electricity Board cannot recover the same from the subsequent

purchaser and/or insist the subsequent purchaser to pay the same and cannot refuse to deny for electric connection on the ground that unless the dues of erstwhile owner is paid, there will not be reconnection and/or new connection.

6. While opposing the present petition, Ms.Lilu Bhaya, learned advocate appearing on behalf of the respondents Board has relied upon the Affidavit-in-reply and has also relied upon condition No.2(J) of the Condition of supply of Electricity of Gujarat Electricity Board and has tried to justify the actions of the respondent in trying to recover the dues of the erstwhile owner respondent from the petitioner being subsequent purchaser. Consequently, it is requested to dismiss the present petition.

7. Heard the learned advocates appearing on behalf of the parties. It is required to be noted that condition No.2(J) of the Condition of Supply

of Electricity has been added / amended in the month of August, 2001, whereas, the petitioner purchased the assets from M/s.Lavraj Food Pvt.Ltd. in the auction held by the GSFC on April, 1998 and obtained the possession of the assets in the year 1998 itself and therefore, condition No.2(J) cannot be made applicable retrospectively. It is also submitted that what is required to be considered is the position prevailing in the year 1998 and in the year 1998, condition No.2(J) was not there in the Act. There was no any other statutory condition / provision in the Act by which the respondents can recover the dues of erstwhile owner from the subsequent purchaser. The case on hand is covered by the judgement of the Hon'ble Supreme Court in the case of Isa Marbles (Supra), wherein, the Hon'ble Supreme Court has categorically held that in absence of any statutory condition and/or provision enabling the Electricity Company to recover the dues of erstwhile owner from the

subsequent purchaser, the electricity Company cannot recover the same from the subsequent purchaser. Under the circumstances, the present petition is required to be allowed.

8. For the reasons stated above, the petition succeeds. The respondents are directed to grant power connection / electricity connection to the petitioner without insisting for payment of the dues of erstwhile owner namely M/s.Lavraj Food Pvt.Ltd. by the petitioner, as expeditiously as possible and on payment of other charges and after completing necessary formalities, in accordance with law. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R. SHAH,J.)

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